

1 continue to be under oath even when you leave for New York.  
2 In all likelihood, you're going to have to come back some  
3 time next week.

4 And I again instruct you not to talk about your  
5 testimony; that is, what you testified to here today with --  
6 with other witnesses who are going to be here or who have  
7 testified. If you have any questions, certainly ask your  
8 attorneys. And that doesn't mean that you can't go home and  
9 tell your family that you were in the courtroom for a couple  
10 of hours and people were asking a lot of questions. But  
11 don't talk about what you actually testified to; don't talk  
12 to people about it until we get completely finished with the  
13 hearing. Anything else?

14 MR. BECKNER: Yes, Your Honor, could you ask the  
15 Witness not discuss his testimony with not just the people  
16 who are scheduled to testify, but with other people in the  
17 company like Mr. Ontiveros and Mr. Edward Milstein, as well?

18 JUDGE SIPPEL: Well, that's a good point. Just  
19 don't talk about -- don't talk about -- you know what I mean  
20 when I say the substance of your testimony?

21 THE WITNESS: I understand.

22 JUDGE SIPPEL: Don't talk about that with anybody  
23 in the company. Don't talk about that in fact with anybody.  
24 You can talk to people in general about the procedures and  
25 what you -- you know, how your experience was and, you know,

1 we gave you water and all that. Do you follow what I'm  
2 saying?

3 THE WITNESS: Yes, sir.

4 JUDGE SIPPEL: Now, we're in -- let's go off the  
5 record for a second.

6 (A discussion was held off the record.)

7 JUDGE SIPPEL: Back on the record. It was  
8 determined off the record, Mr. Nourain has agreed that he  
9 will come back this afternoon to seek to finish his  
10 testimony or at least to testify for the rest of the day.  
11 And we're going to come back at 1:45. Than you very much.

12 (Whereupon, at 12:33 p.m., the hearing recessed to  
13 reconvene at 1:45 p.m., this same day.)

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1                   A F T E R N O O N   S E S S I O N

2                   JUDGE SIPPEL: Back on the record. The witness is  
3 here and we're ready to proceed.

4                   BY MR. BECKNER:

5                   Q All right. Good afternoon, Mr. Nourain.

6                   A Good afternoon, sir.

7                   MR. BECKNER: Your Honor, I assume it's okay if I  
8 complete my examination to its conclusion and being passed  
9 to Mr. Holt.

10                  JUDGE SIPPEL: Yes.

11                  MR. BECKNER: Is that what you had in mind?

12                  JUDGE SIPPEL: That is exactly what I had in mind.

13                  MR. BECKNER: Good.

14                  BY MR. BECKNER:

15                  Q All right. Mr. Nourain, I'd like you to turn to  
16 Time Warner Cablevision Exhibit 18 which is tab 18 in the  
17 large notebook in front of you.

18                  A Okay. I have it.

19                  Q Now, this document is a copy of a pleading that  
20 was filed by Liberty with the FCC in 1995 and if you look at  
21 page 009 of this document is your declaration that the facts  
22 in the document are true to the best of your personal  
23 knowledge, information and belief. Do you see that in page  
24 990?

25                  A Yes, sir.

1 Q And that's your signature there?

2 A Yes.

3 Q And May 17, 1995 is the date that you signed this?

4 A Yes.

5 Q And is there a question in your mind about that?

6 That's the date that's typed there. I was just asking you  
7 if that's the date that you signed it.

8 A Yes, I signed it. Give me a minute.

9 Q Sure.

10 JUDGE SIPPEL: Go off the record while he reads  
11 it.

12 (Whereupon, a brief recess was taken.)

13 JUDGE SIPPEL: Back on the record. Mr. Nourain.

14 THE WITNESS: Yes. I -- something here I see is -  
15 - home address and it's got a date of 2/19 on it.

16 JUDGE SIPPEL: What page are you on?

17 THE WITNESS: I'm on page 004. That's very  
18 confusing to me, sir.

19 BY MR. BECKNER:

20 Q Well, Mr. Nourain, just so we can -- there are so  
21 many numbers on these pages. You refer to the pages by the  
22 very small numbers at the bottom right corner.

23 A Yes. I'm talking about 009.

24 Q Okay. Good. Yeah, because there is also what  
25 looks like a 004 on that page.

1 A Yes, 004 as well.

2 Q Well, let me ask you, I was going to ask you about  
3 these fax messages on the top. The first one appears to be  
4 02/19/1995 at 20:23 hours and there's a number 201-307-1302  
5 and what looks like Janice E. Nourain. Is that your home  
6 telephone number there?

7 A No, that's the fax number for my wife.

8 Q Oh, okay. That's for -- and your wife is Janice?  
9 That's her name?

10 A That's right.

11 Q Okay. And in the next line down there is says  
12 sent by 5/17/95 11:46 Pepper & Corazzini, although the last  
13 part is omitted and it has the same telephone number,  
14 201-307-1302.

15 A Yes, that's correct. I --

16 Q Do you remember having this -- this end up getting  
17 sent to your wife's office for some reason?

18 A Yes, I was at that time, that particular time on  
19 May, I was on vacation. I had a day or two off. And then  
20 they wanted to have this affidavit put together. I worked  
21 with them from my home.

22 Q I see.

23 A That's what, that's what all these things you see  
24 here.

25 Q So this is your home fax number that your wife

1 uses.

2 A That's -- my wife, her business is from home. So  
3 that's the fax number that he has. And I asked him since  
4 this affidavit needed to be put together fast and I wasn't  
5 in the office, so I ask him fine I could send them home and  
6 they could fax it to her number and I could review it and  
7 talk to whoever was putting this together.

8 Q Okay. And this date of 2/19/1995, you think that  
9 perhaps that is printed there because somebody didn't set  
10 the internal calendar of the fax machine correctly?

11 A That's the only thing I can think of. That's not  
12 something I use.

13 Q Now, before you signed this declaration, did you  
14 get a chance to actually read the surreply, the document  
15 that comes before it in this exhibit?

16 A No, this declaration I didn't read it. I went  
17 over it with at the time I talked to Mr. -- he faxed those  
18 to me and went over that with I guess this was done by  
19 Pepper & Corazzini. So I reviewed that.

20 Q Who did you speak with at Pepper & Corazzini?

21 A Howard Barr.

22 Q Howard Barr. All right. So Howard Barr told you  
23 what was going to be in the paper and based on what he told  
24 you about what was going to be in the paper, you executed  
25 this declaration that said it was true and correct as far as

1     you knew.

2           A     That's correct.

3           Q     All right. Now, I'd like you to turn to the page  
4     that's marked small number 003. It's one of the pages of  
5     the surreply itself. In the middle of the paragraph that  
6     begins in the lower half of the page, there's a sentence  
7     that says to compound the situation, the administration  
8     department failed to notify Mr. Nourain that grant of  
9     Liberty's applications was being held up indefinitely as a  
10    result of the Time Warner petition. Do you see that  
11    sentence?

12          A     Yes, I do.

13          Q     Okay. Is that correct as far as you know?

14          A     Yes.

15          Q     Okay. And it was correct on May 17, 1995 as far  
16    as you know?

17          A     Yes.

18          Q     Okay. Is this what -- did you discuss this  
19    sentence or what it says with Mr. Barr in that phone  
20    conversation you said you had with him?

21          A     Yeah, our phone conversation, the discussion was  
22    that I explained to him that because of Pepper & Corazzini's  
23    failure to apply for STAs and since I was only working on a  
24    technical part of it and the legal part of it and whatever  
25    follows that was supposed to be done by them. So therefore,

1 it must have been some foul up in that. That was my  
2 discussion was. This actual sentence, it wasn't me telling  
3 him about administrative, but I told him the process  
4 basically somehow stopped or failed to go according to what  
5 I thought it would go. And some of the paperwork were not  
6 filed or -- and based on that he used that word  
7 administration. To me anything outside the technical part  
8 of it, that's what he put that on, not from what I told him  
9 administration, if that's what the question is.

10 Q So all you told him was is that, is that, is that  
11 no one informed you that the grant of Liberty's applications  
12 is being held up because of Time Warner's petitions, is that  
13 right?

14 A As I said, what I recall now is just talking  
15 general about some of these path and he was trying to put  
16 something together purely legally and I never went into  
17 detail with him. I agreed with him that there were some  
18 problems with communications or with Pepper & Corazzini to  
19 get these things filed, but I did not dictate that or this  
20 to me was a lot of stuff that he put together.

21 Q Okay. So this is not your language.

22 A Absolutely not.

23 Q Okay. And so you don't really know to whom  
24 Mr. Barr is referring to when he says the administration  
25 department because that's not a word that you used with him.



1 A No.

2 Q And as far as you were concerned, all you knew was  
3 that someone knew that Time Warner was petitioning against  
4 all of Liberty's applications and that someone, whoever it  
5 was, wasn't telling you about it or had not told you about  
6 it.

7 A I knew that -- I didn't know until the latter part  
8 of April. And if somebody else from our company knew that  
9 before that, they didn't tell me about it.

10 Q Okay.

11 A Or, I'm sorry, or I'm going to add to that, in our  
12 company or the people we hired such as Pepper & Corazzini.

13 Q Now, in the previous paragraph there's a sentence  
14 that says it has been Liberty's practice, I'm sorry, it has  
15 been Liberty's pattern of practice to delay the grant of  
16 either a pending request or pending application or request  
17 for STA prior to making a microwave path operation. And  
18 then it says Exhibit 2 and Exhibit 2 is your declaration.

19 A That's right.

20 Q Now, if I understood your testimony today, what  
21 you testified was your pattern -- practice had been that you  
22 assumed after a certain amount of time from when COMSEARCH  
23 did the frequency coordination of your request that you  
24 would receive authorization, either an STA or a license,  
25 from the FCC before you activated a new microwave path.

1     Isn't that what you've told us?

2             A     Could you repeat that again?

3             Q     That you assume after a certain amount of time had  
4     passed from when you requested COMSEARCH to do a frequency  
5     coordination for a new path, you assume that after a certain  
6     amount of time from that moment had passed, that you would  
7     have either an STA or a licensed grant from the FCC.

8             A     Yes.

9             Q     And then you turned on the path.

10            A     Yes.

11            Q     But that in fact you did not verify before you  
12    turned on a path that you actually had in your hands a  
13    license or a grant of STA.

14                   JUDGE SIPPEL:   Just a minute.   In fairness to this  
15    witness, I think his testimony was that from the time that  
16    COMSEARCH came up with the information.

17                   MR. BECKNER:    Okay.

18                   JUDGE SIPPEL:   That was the beginning, not from  
19    the time that he made the request to COMSEARCH, because that  
20    could really skew it.

21                   MR. BECKNER:    Okay.   That makes no difference to  
22    my question.   I stand corrected.

23                   JUDGE SIPPEL:   I just want to be sure that he's  
24    answering to the right scenario.

25                   THE WITNESS:    I'm sorry, what?   You asked a

1 question. I said, I don't know. What was the second  
2 question?

3 BY MR. BECKNER:

4 Q Okay. I'm not sure that I heard your answer, I'm  
5 sorry. So you -- let me just so we have a good record here ask  
6 the question again with your indulgence. You previously  
7 testified today that you assumed a certain amount of time  
8 after COMSEARCH had done a frequency coordination that you  
9 requested, that either the FCC -- the FCC had given Liberty  
10 some sort of authorization to operate a new microwave path,  
11 either an STA or actual license.

12 A Yes.

13 Q And based on that assumption, that after a certain  
14 amount of time had passed, you turned on or you activated a  
15 new microwave path, correct?

16 A Yes.

17 Q Okay. But that you did not actually have a  
18 practice of checking or seeing that you had an actual  
19 license for the new path or an STA for the new path before  
20 you activated the new path. That's not what you did.

21 A There were licenses, when the licenses would come,  
22 as I mentioned, the licenses I would know because the  
23 license would refer to the path. The STA ones were the ones  
24 if they would be coming in, periodically would come in  
25 against the transmitter, I was the one would not show that.

1 But I was receiving them. If I wasn't receiving anything,  
2 then your statement is correct. But since I was receiving,  
3 it was -- my assumption they were all met. I was assuming  
4 that. But if the license, the license obviously told you  
5 which path. The STA was the one at the time you wouldn't  
6 know by looking at it tell me. So the assumption was that  
7 we are getting that.

8 Q Wouldn't this sentence here that I just read a few  
9 moments ago, it has been Liberty's pattern and practice,  
10 wouldn't that sentence be -- if that sentence were to be  
11 accurate, wouldn't it read that it was Liberty's pattern and  
12 practice to allow a certain amount of time to pass from when  
13 concerts perform a frequency coordination before making a  
14 microwave path operational that you did not necessarily wait  
15 until you had a piece of paper, that you definitely  
16 identified as either a license for that path or an STA for  
17 that path?

18 MR. BEGLEITER: I'm going to object, Your Honor.

19 JUDGE SIPPEL: Sustained.

20 BY MR. BECKNER:

21 Q Looking at the second paragraph of this same page,  
22 003, there's a statement Mr. Nourain is perhaps unadvisedly  
23 assumed grant of the STA request which in his experience had  
24 always been granted within a matter of days of filing and  
25 thus rendered the paths operational. Now, in fact, what

1 you, what you learned in the last week of April,  
2 Mr. Nourain, as you testified to this morning is that no STA  
3 requests had even been filed and that that's what you had  
4 assumed was that STA requests for these paths had been  
5 filed? Isn't that what you said?

6 A At the end of April after I found out about the  
7 Time Warner petition, yes.

8 Q Okay. Again, I want to make sure the question and  
9 the answer are clear. What you learned at the end of April  
10 was that no STA requests for these paths had been filed and  
11 you had assumed that they had been filed and granted, is  
12 that correct?

13 A Yes.

14 Q Okay.

15 MR. BEGLEITER: Your Honor, that's what -- that's  
16 what it says.

17 JUDGE SIPPEL: Well, I'm wondering if you're --  
18 don't try and have this witness rewrite the surreply.

19 MR. BECKNER: No, I'm not.

20 JUDGE SIPPEL: Well, that seems to be what's  
21 happening here and it's taking a long time and I think -- I  
22 know, I mean, the record is abundantly clear with respect to  
23 what this witness did insofar as assuming he had the  
24 authority. And so to keep going back to that I don't think  
25 is going to help anything.

1 MR. BECKNER: Okay.

2 JUDGE SIPPEL: I'd like to see you move into  
3 another area.

4 MR. BECKNER: All right. Well, I think I'm done  
5 with this document. Just one second, Your Honor.

6 JUDGE SIPPEL: All right. Off the record.

7 (Whereupon, a brief recess was taken.)

8 JUDGE SIPPEL: Back on the record. Are you almost  
9 concluding now?

10 MR. BECKNER: Yeah, yeah. Well, this is on the  
11 record. The conference with my colleagues is simply talking  
12 about short circuiting some of this.

13 JUDGE SIPPEL: All right. So are you going to do  
14 that?

15 MR. BECKNER: Yes, sir.

16 JUDGE SIPPEL: All right. Let's proceed then. I  
17 meant to mention to this before we even got on the record,  
18 when we first got on the record this afternoon. I want to  
19 be sure, I want to caution you that I know what your  
20 inclination is, is to look for logical answers to questions.  
21 That's not the way you answer a question necessarily here  
22 because when you listen to it and be sure you understand it  
23 and answer it yes, no, or I don't know. Answer it factually  
24 as you can recall it, to the best that you can recall. Not  
25 what should have happened unless he's asking you on cross

1 examination and he follows up and asks you what should have  
2 happened. Then that's within your purview. But be careful  
3 with your answers. Go ahead.

4 BY MR. BECKNER:

5 Q All right. Mr. Nourain, I'd like you to take a  
6 look at Time Warner Cablevision Exhibit 21. That's at tab  
7 21 in the notebook. It's a large document and I'm not going  
8 to ask you about, I'm only going to ask you about that part  
9 which is your declaration which begins on the page that's  
10 marked 019.

11 A 019?

12 Q Yes.

13 JUDGE SIPPEL: You find it, Mr. Nourain. You let  
14 us know when you've found it.

15 THE WITNESS: Yes, I did.

16 BY MR. BECKNER:

17 Q There are there pages to that and that's what I'm  
18 going to ask you about. Okay. First again just some of the  
19 routine things here. On the third page your signature and  
20 the date of 6/12/95.

21 A Yes.

22 Q Is that the date that you signed this?

23 A Yes.

24 Q Okay. And did you write this in conjunction with  
25 a lawyer or someone?

1 A Yes.

2 Q Whom? Do you remember who it was?

3 A It was from Constantine & Partners I guess. I  
4 talked with a lawyer named Leslie Spasser.

5 Q Okay. And I take it that at the time that you  
6 signed this declaration, you had in fact read all of it and  
7 believed it all to be true and correct to the best of your  
8 knowledge?

9 A Yes.

10 Q And as you sit here today, do you believe that  
11 anything about it is incorrect as far as you know?

12 A I need a moment to go over it.

13 Q Go ahead.

14 JUDGE SIPPEL: Go off the record.

15 (Whereupon, a brief recess was taken.)

16 JUDGE SIPPEL: Back on the record.

17 THE WITNESS: Yes.

18 JUDGE SIPPEL: Are you satisfied you had a chance  
19 to read that, Mr. Nourain?

20 THE WITNESS: Yes, it refreshed my memory.

21 BY MR. BECKNER:

22 Q Okay. The only question that I asked you and that  
23 I'd like you to tell us if you could is having read this  
24 declaration today, is there any part of it which you now  
25 find to be incorrect?



1 A No.

2 Q Okay. All right. I'd like you to turn to  
3 Exhibit 22, Time Warner Cablevision Exhibit 22. IT's tab 22  
4 in the notebook.

5 A Yes, I have that.

6 Q All right. Now, this -- do you recognize this as  
7 a copy of a letter that you faxed to Mr. Duy Duong at  
8 COMSEARCH?

9 A Yes.

10 Q And can you tell me what caused you to request  
11 that Mr. Duong perform these frequency coordinations?

12 A It was some of the path I wanted to coordinate.  
13 It also was that some of the path that I found out on the  
14 middle of June that it was -- it was a mistake done on it by  
15 COMSEARCH the year before that and it wasn't, it wasn't  
16 submitted for filing and the coordination process wasn't  
17 done on that by COMSEARCH. So I asked him to redo that.

18 Q Were those, were those paths to -- can you tell us  
19 which of those paths there are, there were -- there's 12  
20 listed here. Were all 12 of these ones that you were  
21 supposed to have done a year earlier?

22 A No.

23 Q Could you tell us which ones were supposed to have  
24 been done a year earlier?

25 A Number one. I believe it's one, four, seven and

1 eleven.

2 Q Do you happen to know what the address is of  
3 Liberty Tower? What street it's on.

4 A A couple of addresses that I think -- I don't  
5 exactly remember, but if I could refer to a number I guess -  
6 - the one that had the whole list --

7 Q Oh, you want to look at Exhibit 30?

8 A That was HDO? That was HDO do you recall?

9 Q Yes.

10 A If I go over that, I could probably --

11 Q All right. Well, go ahead and take a look at,  
12 that's Exhibit 30.

13 A Thirty.

14 Q If that will help you, that's fine.

15 JUDGE SIPPEL: You have to compare the two? Here.  
16 Take my copy of the hearing designation of Appendix A is  
17 right there.

18 THE WITNESS: The four that I mentioned here, the  
19 number one, the East 56th, against the 440 East 56th, number  
20 four is 38 East 85th which says East 85th. This Liberty  
21 Tower that we talked about should be 380 Rector Place. And  
22 it's one more. 1295 Madison Avenue. That's the one I  
23 believe I said on number seven. That's also called Wales  
24 Hotel.

25 Q Okay. And that's the one that's identified here

1 as East 92nd Street?

2 A That's correct.

3 Q Okay.

4 A Those are the four buildings.

5 Q Now, according to the HDO, Exhibit 30 which you'd  
6 been looking at, all of those four paths had been activated  
7 some time in 1994, correct?

8 A That is correct.

9 Q Okay. And when did you say you discovered that  
10 those paths -- that you didn't have authority to operate  
11 those paths, I think you said mid-June, is that right?

12 A Mid-June, about June 15th, 16th.

13 Q And can you tell us how you made that discovery?

14 A After April 28th, I went, you know, we went  
15 through all our records to see that how about the other path  
16 -- we went through I would say kind of an auditing kind of  
17 thing. We went over all the paths, see what we have, what  
18 we don't have. And at some point after I completed,  
19 tabulated everything, we'd find out that those particular  
20 buildings did not have any file associated with it, any FCC  
21 file associated with it. But I did have all the technical  
22 product which I have done that on 1994. So everything I had  
23 in the record as far as a study done by COMSEARCH from there  
24 on we could not find any file or any STA license. I spoke  
25 with Pepper & Corazzini and they didn't have theirs either.

1 Q Did -- with whom at Liberty if anybody did you  
2 share this information that you had discovered these  
3 additional four operating paths for which Liberty had  
4 received no authority?

5 A Tony Ontiveros. As soon as I found that out.

6 Q Did you tell anybody else besides Tony?

7 A At that point again Tony apparently discussed it  
8 with Peter Price. Then I was asked to go downtown and we'll  
9 discuss that with the corporate executive.

10 Q So, so, so you had a meeting downtown about these  
11 extra four paths?

12 A Yes, I had a meeting with -- yes.

13 Q And you had meetings with whom besides Tony?

14 A Tony, Peter Price and Edward Milstein.

15 Q Okay. and would that meeting have been held right  
16 around June 16, do you remember?

17 A Yes.

18 Q Okay. And I think in an answer to a previous  
19 question, you said you also were checking with someone at  
20 Pepper & Corazzini. Was that Mike Lehmkuhl?

21 A Yes.

22 Q Okay. And did you tell Mr. Lehmkuhl that you were  
23 going to request frequency coordinations and applications  
24 for these paths?

25 A I don't recall at that point I talked to him about

1 that. I asked him -- that was in the middle of my  
2 investigation. The first thing I asked him to check for his  
3 file, make sure the application had been filed because I  
4 didn't have the record of -- it didn't mean that he wouldn't  
5 have it.

6 Q Right. And then after you made the request, did  
7 he call you back and say I don't have any records either?

8 A That's correct.

9 Q Okay. And so at that point you concluded that you  
10 didn't have authority from the FCC to run these paths after  
11 Mr. Lehmkuhl called you back?

12 A That's correct.

13 Q Okay. And then in that, in that call back that  
14 you had from Mr. Lehmkuhl in that same conversation did you  
15 tell him that we're going to have to prepare applications  
16 for those paths?

17 A Yes.

18 Q Now, returning to Exhibit 22 which is the memo to  
19 Duy Duong.

20 A Yes.

21 Q Can you just explain what you meant by a ten day  
22 basis there in that first sentence? You said please  
23 coordinate the following 12 paths today on a ten day basis?

24 A It just means an expedited path.

25 Q I see. Okay. Now, I want you to take a look at,

1 you probably need to take a look at both Exhibits 23 and 24,  
2 Time Warner Cablevision Exhibits 23 and 24.

3 A Yes.

4 Q 23 is a memorandum from Peter Price that says it's  
5 addressed to you and 24 is a series of tables.

6 A Yes, I have that.

7 Q Can you remember, do you remember getting this  
8 memorandum from Mr. Price on or about July 13, 1995?

9 A Yes.

10 Q Do you remember, do you remember whether or not  
11 the lists which are Exhibit 24 were attached to the  
12 memorandum when you got it?

13 A I don't recall.

14 Q Okay. All right. Let me ask you about the list  
15 which are in fact Exhibit 24. Did you supply information to  
16 someone that was used in putting these lists together?

17 A Give me a minute. I'll go over the list first.

18 Q Okay.

19 A Refresh my memory.

20 JUDGE SIPPEL: Let's go off the record.

21 (Whereupon, a brief recess was taken.)

22 JUDGE SIPPEL: Back on the record.

23 THE WITNESS: It seems like two pages it seems to  
24 me is duplicated. So realistically you have two lists, A  
25 and B which is what I'm told it seems to me they're both the

1 same.

2 Q Okay. Fine.

3 A And then three -- yes, those two lists. Yes, go  
4 ahead.

5 Q What I wanted to know, this list has certain  
6 information such as path coordination date and license  
7 application date and so on. And what I wanted to know is  
8 did you, did you contribute some of the information that's  
9 reflected on this list?

10 A I reviewed that list after it was completed.

11 Q Okay. Do you know who made the -- who put the  
12 list together?

13 A The list was done internally by Mr. Price's  
14 secretary or somebody at marketing.

15 Q I see. And they sent it to you to look at.

16 A Look at it and if there was any changes I would  
17 probably contribute to that, yes.

18 Q And do you remember about what -- when it was when  
19 you did look at this list, what month of the year?

20 A This has to be around the time that his memo came  
21 up, July, mid-July.

22 Q Okay. Do you remember discussing this list with  
23 anyone?

24 A This list was a complete open list. Everybody has  
25 access to it. That was one of the lists that we were going

1 to go follow up to make sure that everything was properly  
2 done. So this was not the -- it wasn't my list or somebody  
3 else's list. That's a general list for marketing,  
4 operation, engineering, everybody should pay attention to  
5 this list.

6 Q But do you specifically remember discussing it say  
7 with Tony Ontiveros?

8 A Sure, yes.

9 Q What about Peter Price? Do you remember  
10 discussing it with him?

11 A I didn't directly talk to Peter Price about it.

12 MR. BECKNER: Okay. Your Honor, Exhibit 24 is not  
13 yet in evidence. No, I take it back. I'm sorry, I'm  
14 mistaken. Oh, 22. I'm sorry. I beg your pardon, Your  
15 Honor. I was wrong. 24 is in evidence. 22 is not yet in  
16 evidence and that's the memorandum that Mr. Nourain has  
17 identified that he sent to Duy Duong at COMSEARCH.

18 JUDGE SIPPEL: All right. And it's in the form of  
19 a letter. But that's dated June 30, 1995, right?

20 MR. BECKNER: That's correct. And I'd like to now  
21 offer it reflecting in part with the witness's testimony as  
22 he's identified that it reflects the knowledge that certain  
23 additional paths were operating without authority in  
24 addition to the ones that had been identified to the  
25 Commission in May.



1 JUDGE SIPPEL: Any objection to that?

2 MR. BEGLEITER: I don't think it's an issue before  
3 this Court, but I will object. I will note the relevance.

4 JUDGE SIPPEL: You feel it's not relevant. Your  
5 argument is it's not relevant.

6 MR. BEGLEITER: Right.

7 JUDGE SIPPEL: Well, I'd like to just hear this a  
8 little bit more. Why do you feel it's relevant and why does  
9 Liberty feel it's not relevant?

10 MR. BECKNER: Well, the question of the accuracy  
11 and completeness of Liberty's statements to the Commission  
12 during this period is one of the things that's specified in  
13 the HDO, representation to the Commission. The witness has  
14 just testified that he had a discussion on June 16 with  
15 Mr. Price and Mr. Edward Milstein in which he told them  
16 about these four paths that were operating unlicensed that  
17 he's identified here.

18 On June 16, Liberty sent in response to a 308(b)  
19 request a letter, actually two letters, a letter from Mr.  
20 Price and a letter from Mr. Barr, that purported to identify  
21 all of the unlicensed but activated paths. And the letter  
22 did not include these four paths that the witness just  
23 identified as being activated without licenses. Now,  
24 subsequently Liberty did identify those paths, but it did  
25 not do so until July 24th when it filed STA requests.